IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1281 of 2003

Mr.Jahubar .. Revision Petitioner/
P.W.1.

vs.

1.Mr.D.Prabakaran
2.Mr.D.Ravi .. Respondents/Accused.

Prayer: This Revision has been preferred against the judgment dated 13.05.2003, made in C.C.No.4814 of 2000 on the file of the learned Metropolitan Magistrate No.VIII, Chennai.

For Appellant : Mr.Siraj
For Respondents : Mr.Veera Kathiravan (For R1)
Mr.D.R.Ramesh (For R2)

ORDER

This revision has been preferred against the judgment dated 13.05.2003 made in C.C.No.4814 of 2000 on the file of the Metropolitan Magistrate No.VIII, Chennai.

2. This revision has been preferred by the complainant. Originally there are two accused. According to the complainant on 14.6.2000 in a meeting conducted between the jewelry shop owners at the Association building of the Jewelry shop businessmen. There arose a quarrel between P.W.1 and A1 which resulted in the attack of A1 at the instigation of A2 with hands below the left eye brow of P.W.1 causing simple injury. Since the police have failed to take any action on the complaint preferred by the complainant except referring the complainant to the government hospital for treatment no concrete action was taken by the police which resulted in the complainant approaching the criminal Court with a private complaint.

3. The learned Magistrate had forwarded the complaint under Section 156(3) of Cr.P.C., to the concerned police to investigate and register a case. Accordingly the police have registered the case under Folwer Bazzar Police Station Cr.No.1540 of 2000 under Section 341 and 323 r/w 34 IPC.

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4. The case was taken on file by the VIII Metropolitan Magistrate, Chenai. On appearance of the accused on summons, copies under Section 207 of Cr.P.C., were furnished to the accused and when the charges against the accused were explained and questioned both the accused pleaded not guilty. On the side of the prosecution P.W.1 to P.W.9 were examined and Ex.P.1 to Ex.P.9 were exhibited and M.O.1 to M.O.3 were marked.

5. P.W.1 is the complainant. He would depose that on 14.6.2000 at about 5.00 pm a meeting was conducted in the building of the jewellery shop owners at Subarayan Naikan lane, Chennai 79, where A1 & A2 were also present in the meeting and there arose a quarrel between A1 and the complainant in connection with irregular collection of money from the public. P.W.1 has already filed a complaint with C-1 Police station against A1 & A2 and one Ramadass, a member of the jewellery shop association and in the said meeting A1 questioned about the complaint preferred by P.W.1 with the police against him and at that time A2 had instigated A1 to assault and immediately A1 had fisted with hands below the left eye-brow of P.W.1 which resulted in bleeding injury and thereafter the meeting came to an end abruptly and he went to C-1 Police station and preferred a complaint, but the police without registering the FIR on the basis of the complaint preferred by him sent him to the Government General Hospital along with a policeman for treatment, where he was admitted as an inpatient. On the following day evening he was discharged. When the complainant P.W.1 approached the police with a request to register his complaint, the Inspector of Police had refused to register the same and advised him to withdraw his complaint or to bring more witnesses. P.W.1 has also deposed that subsequently he preferred a private complaint before the judicial magistrate who in turn had directed the police to investigate and file a final report and accordingly, the police have registered the case and investigated and filed a charge sheet against A1 & A2. P.W.1 would identify that he had handedover M.O.1-blood stained shirt, M.O.2-blood stained banian and M.O.3-blood stained kerchief to the police.

6. P.W.2 to P.W.4 have not supported the case of the prosecution. Hence, they were treated as hostile witnesses by the learned Assistant Public Prosecutor.

7. P.W.5 is an eye witness to the occurrence, who would corroborate the evidence of P.W.1 to the effect that in the meeting of the jewellery shop businessmen at the association building on 14.6.2000 at about 5.00 pm and there was a scuffle between P.W.1 and A1 which resulted in the assault of A1 on P.W.1 causing simple injury on the left cheek below left eye and that P.W.1 has preferred a complaint to the police from where P.W.1 was referred to the government general hospital for treatment.

8. P.w.9 is the then Inspector of Police, Law & Order, C-I Police Station, who had investigated this case. He had examined the witnesses and recorded their statements and visited the place of occurrence and prepared Ex.P.7 observation mahazar and Ex.P.8 rough sketch in the

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presence of P.W.6 & P.W.7. But both P.W.6 & P.W.7 would admit only their signatures Ex.P.2 & P.3 in the mahazar. Hence, they were treated as hostile witnesses. P.w.9 would further depose that after recording the statement of P.W.1, he sent P.W.1 to the government hospital for treatment along with a police head constable and had seized M.O.1 to M.O.3 on 30.7.2000 from P.W.1 and sent the same to the Court under Form 95-Ex.P.9.

9. P.W.8 is the doctor, who had treated P.W.1 on 14.6.2000 at about 6.50 pm, who was produced by a policeman. P.W.8 would depose that on examination, P.W.8 could find a contusion below the left eye measuring ½ x ½ cm and that P.W.1 was admitted as an inpatient. Ex.P.4 is the accident register copy and Ex.P.5 is the wound certificate and that the injury is simple in nature.

10. After completing the investigation P.W.9 has filed the charge sheet against the accused under Section 341 and 323 r/w 34 IPC before the Court.

11. When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., the accused denied their complicity with the crime. D.W.1 was examined as a defence witness. After going through the oral and documentary evidence, the learned trial judge has acquitted both the accused on the ground that the prosecution has failed to prove its case beyond any reasonable doubt. Aggrieved by the findings of the learned trial judge, this revision has been preferred by the complainant.

12. Heard Mr.Siraj, learned counsel appearing for the revision petitioner as well as Mr. Veera Kathiravan learned counsel appearing for the first respondent and considered their submissions.

13. The revision has been preferred against the acquittal. So the important point to be decided in this revision is whether the judgment of the trial Court is manifest of error of law or procedure or perverse in nature.

14. The Point:-

14(a) The learned trial judge has acquitted the accused on three grounds. The first ground being that there is an inordinate delay in preferring the private complaint by P.W.1-revision petitioner. The learned trial judge would observe that for an incident which took place on 14.6.2000 a private complaint was filed under Section 200 Cr.P.C., by the complainant only on 27.7.2000 that is after a lapse of 45 days. But it is the definite case of the complainant that soon after the occurrence on 14.6.2000 he went to C-I police station and lodged a complaint but the inspector failed to register the case on the basis of the complaint preferred by him and advised him to bring more witnesses. It is in evidence in the deposition of P.W.1 that a few days later i.e, on 26.6.2000 a Deputy Commissioner of Police also enquired him but nothing came out of his enquiry. He would admit that he does not know any thing

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about the private complaint procedure and he met his advocate only on 27.5.2000 who only advised him to prefer a private complaint and immediately on the same day he preferred the private complaint. The only piece of evidence available on record to show that on the date of occurrence itself the complainant/P.W.1 had approached the police and preferred a complaint is the evidence of the doctor P.W.8, who had treated him when P.W.1 was produced before him with a policeman. P.W.8, the doctor, in his evidence would admit that the complainant was produced on 14.6.2000 at about 6.50 pm with a policeman. This fact has also been recorded in Ex.P.4-copy of the accident register and Ex.P.5-wound certificate issued by P.W.8. There is no acceptable explanation from the prosecution as to why the police have not registered the case on 14.6.2000 on the basis of the complaint preferred by P.W.1 even though they sent P.W.1 to the doctor for the injury he had sustained in the occurrence, through a policeman. So the first reasoning assigned by the learned trial judge for acquittal on the ground of delay cannot be sustainable.

14(b) The next reasoning of the learned trial judge for acquittal is that M.O.1 to M.O.3 were not seized under mahazar as provided under law. But it is in evidence that M.O.1 to M.O.3 were not recovered by the Investigation Officer from the scene of occurrence. M.O.1 to M.O.3 were handed over by P.W.1 on 27.7.2000 to P.W.7, who in turn under form-95 had sent to the magistrate Court. The fact that M.O.1 to M.O.3 were not sent to the forensic science laboratory to subject them for chemical examination to find out whether the blood stain contained in those articles tallies with the blood group of the complainant, will not be a ground to through away the case of the complainant. The occurrence has been not only spoken to by the injured witness P.W.1, but also by P.W.5 even though P.W.2 to P.W.4 turned hostile. There is no specific motive suggested against P.W.5 to depose falsehood against A1. P.W.5 in his evidence would depose that at the place of occurrence at the time of occurrence A1 had assaulted with hand on the left cheek of P.w.1 causing simple injury and that P.W.1 had preferred a complaint with C-I Police Station but they have failed to take any action on the complaint. The learned counsel appearing for the respondent would contend that P.W.5 is having bad antecedents and that he is an accused in a case filed on the basis of the complaint of a Police Officer of Bangalore City. But P.W.5 in his cross-examination has stated that the the said case ended in acquittal. The fact that a criminal case was filed against P.W.5, will not derive us to eschew the evidence of P.W.5 in this case, in the absence of any motive attributed against P.W.5 to depose against A1 & A2. So the second ground on which the learned trial judge has acquitted A1 is not proper in my view.

14(c) The third ground on which the learned trial judge has acquitted A1 is that the evidence of P.W.8, the doctor, is not clear and there are discrepancies in the evidence of P.W.1 and P.W.5. But there is no where in the judgment the learned trial judge has pointed out the discrepancy in the evidence of P.W.1 and P.W.5 and on the other hand the evidence of

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P.W.1 was corroborated by P.W.5 to the effect that at the time of occurrence at the place of occurrence A1 had assaulted P.W.1-complainant with hands causing simple injury on the left side of the cheek which was corroborated by the medical evidence P.W.8, the doctor, and Ex.P.4-copy of the accident register and Ex.P.5-wound certificate.

14(d) The learned counsel for the first respondent relying on 2004(13) SCC 374 (Hydru Vs. State of Kerala), contended that the powers of revisional courts is very limited and the revisional Court can interfere with the judgment of the trial Court only if it finds that the procedural irregularity or material evidence has been overlooked or misread by the subordinate court. The exact observation in the above said judgment of the Honourable Apex Court is as follows:-

> "From a bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from the one recorded by the appellate Court. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or misread by the subordinate Court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellant court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions Court whereby the appellant was acquitted."

In the case on hand the above said dictum will be applicable to this revision in four corners because only on the ground that there was a delay in preferring the complaint the learned trial judge has acquitted both the accused by overlooking the fact that the complainant/revision petitioner had approached C-1 Police station even on the date of occurrence itself. But since they have failed to take any action against the complaint except by sending him for medical treatment along with policeman, no concrete action was taken by the police which necessitated the complainant to file the private complaint. The evidence that after the complaint the police have referred P.W.1 to the hospital with a constable was overlooked by the trial Court, which is the circumstance in favour of the revision petitioner is a strong ground for this Court to interfere with the judgment of the trial Court.

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14(e) The next dictum relied on by the learned counsel appearing for the first respondent is 2003(12) SCC 758 [Crl.A.Nos.682-83 of 1996 Shingara Singh Vs. State of Haryana and another and in Crl.A.Nos.1345-47 of 2003 Suba singh Vs. State of Haryana and others), wherein the Honourable Apex Court held as follows:-

> "It is well settled that in an appeal against acquittal the High Court is entitled to reappreciate the entire evidence on record but having done so, if it finds that the view taken by the trial

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Court is a possible reasonable view of the evidence on record, it will not substitute its opinion for that of the trial Court. Only in cases where the High Court finds that the findings recorded in ignorance of relevant material on record or by taking into consideration evidence which is not admissible, the High Court may be justified in reversing the order of acquittal."

The above said ratio decidendi will also applicable to the present facts of the case in all four corners in favavour of the revision petitioner. The evidence of P.W.1 which was corroborates the evidence of P.W.5 was not at all considered by the trial Court. The non-consideration of the fact that soon after the complaint, the complainant was referred to the government hospital for treatment along with a policeman will also cause a cloud on the judgment of the trial Court, which in my opinion is perverse in nature.

14(f) Relying on 2005(1) SCC 115 (Satyajit banerjee and others Vs. State of W.B. and others), the learned counsel for the first respondent would contend that direction for retrial should not be made in all or every case where acquittal of accused is for want of adequate or reliable evidence. Relying on Best Bakery case (2004 (4) SCC 158) (Gujarat riots case), the Honourable Apex Court has held as follows:-

"Since strong reliance has been placed on Best bakery case (Gujarat riots case) it is necessary to record a note of caution. That was an extraordinary case in which this Court was convinced that the entire prosecution machinery was trying to shield the accused i.e, the rioters. It was also found that the entire trial was farce. The witnesses were terrified and intimidated to keep them away from the Court. It is in the aforesaid extraordinary circumstances that the court not only directed a de novo trial of the whole case but made further directions for appointment of the new prosecutor with due consultation of the victims. Retrial was directed to be held out of the state of Gujarat.

The law laid down in best Bakery case in the aforesaid extraordinary circumstances, cannot be applied to all cases against the established principles of criminal jurisprudence. Direction for retrial should not be made in all or every case where acquittal of accused if for want of adequate or reliable evidence. In Best Bakery case the first trial was found to be a farce and is described as "mock trial". Therefore, the direction for retrial was in fact, for a real trial. Such extraordinary situation alone can justify the directions as made by this Court in Best Bakery case."

There cannot be two opinion about the findings of the Honourable Apex Court in which the principle laid down is that for want of adequte or relevant evidence a retrial can be ordered by the appeallate court. When the trial Court fails to appreciate the evidence which is already on record, then I am of the view that it is the duty of the revisional Court

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to interfere in order to see the people who approach the court, gets the fruits of justice. The trial Court without giving any reason has rejected the evidence of P.W.5, who has corroborated the evidence of P.W.1 in respect of the occurrence. The reasoning given for the acquittal of the accused on the ground of delay is also not sound because the delay is not on the part of the complainant but on the part of the police who have failed to register the complaint preferred by P.W.1 on the date of occurrence. The fact that the complaint was preferred on the date of occurrence has been proved by the evidence of P.W.8, the government hospital doctor, who had treated P.W.1 on the same day of occurrence, who was produced before him through a police head constable.

14(g) The last dictum on which reliance was made by the learned counsel appearing for the first respondent is that 2003 SCC (Cri) 1205 (Thankappan Nadar and others Vs. Gopala Krishnan and another). The observation of the Honorable Apex Court in the above said dictum runs as follows:-

> "In the present case also, the High Court has not found any procedural illegality or manifest error of law in the order passed by the Sessions Judge. The High Court has merely reappreciated the evidence and arrived at the conclusion that there was no reason not to reply upon the injured witnesses P.W.1, P.W.2 and P.W.4 and that when there is an attack by a large group of people armed with lethal weapons and when they belong to an organised group like RSS, the people of the locality may be terrorised and might be unwilling to testify even if they had actually seen the occurrence. The High Court observed that the victims in the case no doubt belong to the rival party, but that does not render their evidence interested or partisan and thereafter set aside the acquittal order passed in appeal by the Sessions Judge and remitted it for fresh hearing and disposal by observing that the Court would decide the matter unhampered by any of the observations contained in the order. From the findings recorded by the High Court, it is difficult to hold that there was any manifest error of law or procedure. It is nobody's case that the appellate court has shut out or has overlooked the evidence which clinches the issue. The High Court has only reappreciated the entire evidence and has taken contrary view for setting aside the acquittal order. This, in our view, is not permissible while exercising the revisional jurisdiction at the instance of the de facto complainant against the order of acquittal."

The facts of the above said case will not be applicable to the present facts of the case because it has been brought to the notice of this Court the evidence of P.W.5 which is in corroboration in nature to the evidence of P.W.1 and also the evidence of P.W.8, the doctor, which were totally ignored by the trial Court.

14(h) The learned counsel appearing for the revision petitioner in

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support of his contention relied on the ratio decidendi 2000 (2) SCC (Cri) 8 (Zahira Habibullah Sheikh (5) and another Vs. State of Gujarat and others), wherein it has been observed by the Honourable Apex Court as follows:-

> ""Witnesses" as Bantham said: are the eyes and ears of justice. Hence, the importance and primacy of the quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors, like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by the courts on account of frequent turning of witnesses as hostile, either due to threats, corercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle the truth and realities coming out to surface rendering truth and justice, to become ultimate casualties."

14(i) Relying on 2004 Crl.L.J. 1807 (Dhanaj Singh alias Shera and others Vs. State of Punjab), the learned counsel for the revision petitioner would contend that the failure to consider the ocular testimony by the trial Court is a favourable circumstance for the revisional Court to interfere with the findings of the trial Court. The exact observation in the above said ratio relied on by the learned counsel for the revision petitioner runs as follows:-

> "In reply, learned counsel for the State submitted that faulty investigation cannot be a ground to affect the credibility of the eye-witnesses. It is a fairly settled position in law that when witnesses are branded as partisan or inimical, their evidence has to be analysed with care and scrutiny. That has been done in the present case and both the trial Court and the High Court have found the evidence to be credible. Even if the investigation was faulty, both the trial Court and the High Court have acted only in the permissible way ie. to weigh the evidence carefully and come to an independent conclusion. As rightly noted by the High
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> Court, the investigation seems to be slipshod. The highly improbable stand that the complainant and his relatives killed the deceased who was their close relative can hardly be accepted with even a pinch of salt. Though the deceased and the complainant had criminal track records that per se will not affect the evidence of witnesses if it is otherwise credible and cogent. Both the trial Court and the High after analysing the evidence found it to be credible, cogent and trustworthy. The

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plea that the primary duty to investigate the evidence is that of the police and when the police has given clean chit, that should prima facie be accepted is clearly without substance. .... The stand of the appellants relate essentially to acceptability of evidence. Even if the investigation is defective. In view of the legal principles set out above, that pales into insignificance when ocular testimony is found credible and cogent. Further effect of non-examination of weapons of assault or the pellets etc. in the background of defective investigation have been considered in Amar Singh's case (supra). In the case at hand, no crack in the evidence of the vital witnesses can be noticed."

The contention of the learned counsel appearing for the first respondent that P.W.5 has involved in the criminal case will not affect the evidence of P.W.5 in this case and as far as this case is concerned his evidence is credible and cogent and corroborative in nature with the evidence of P.W.1, which was not given due credence by the learned trial judge. Under such circumstances, this Court has necessarily to interfere with the findings of the learned trial judge recording the acquittal of A1. Point is answered accordingly.

15. In the result, the revision is allowed and the findings of the learned trial judge against A1 in C.C.No.4814 of 2000 on the file of the VIII Metropolitan Magistrate, Chennai, is set aside and the matter is remanded to the trial Court for reappreciating the evidence against A1 afresh and to give a fresh finding as against A1 alone and the findings of the trial Court as against A2 is confirmed. The learned trial Court is directed to dispose of the matter in accordance with law, within two months from the date of receipt of records. It is made clear that the trial Court shall not be carried away by any of the observation made in this Judgment.

Registry is directed to dispatch the records immediately.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To
1.The VIII Metropolitan Magistrate, Chennai.
2.-do- through The chief Metropolitan Magistrate, Chennai.
3. The Sub Asst. Registrar, High Court, Madras.
+ 1 CC To Mr. B.Pughalendhi, Advocate SR NO.24200
+ 1 CC To M/s.Siraj and Siraj, Advocate SR NO.24372

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